

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN S. O'LEARY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C20-1020-RSL

ORDER REFERRING CASE TO
FEDERAL PUBLIC DEFENDER FOR
REVIEW

Petitioner filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. There is no constitutional right to appointed counsel to pursue collateral review of a conviction or sentence. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). A right to appointed counsel does arise for a financially qualified individual seeking relief under 28 U.S.C. § 2255 when the court determines that an evidentiary hearing is required. Rule 8(c) of the Rules Governing Section § 2255 Cases in the United States District Courts. In addition, the Court may exercise its discretion to appoint counsel at an earlier stage of § 2255 proceedings when the Court determines that it is in the interests of justice to do so. *Id.*; 18 U.S.C. § 3006A(a)(2).

Although it is difficult to determine at such an early stage of the proceedings, it appears possible appointment of counsel could be warranted in the instant action. The Court, however,

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1 lacks sufficient information to determine whether the interests of justice, in fact, require an
2 appointment.

3 Accordingly, the Court does hereby ORDER as follows:

4 (1) This matter is referred to the Office of the Federal Public Defender for review.

5 (2) Within *twenty-one (21) days* of the date on which this Order is signed, the Office
6 of the Federal Public Defender shall advise the Court whether it intends to seek appointment in
7 this matter. If the Office of the Federal Public Defender determines that it will seek appointment
8 in this matter, it shall assist petitioner in preparing a motion for appointment of counsel, as well as
9 a financial affidavit which will allow the Court to determine whether petitioner is financially
10 eligible for such an appointment.

11 (3) The Clerk is directed to send copies of this Order to petitioner, to counsel for
12 respondent, to the Office of the Federal Public Defender, and to the Honorable Robert S. Lasnik.

13 DATED this 20th day of July, 2020.

14 

15 Mary Alice Theiler
16 United States Magistrate Judge